

Appl. No. 10/671,388  
Amdt. dated May 15, 2008  
Reply to Office Action of April 22, 2008

### **REMARKS/ARGUMENTS**

Claims 1-5, 8-9, and 11-12 are presented for Examiner Mercier's consideration. Claim 1 has been amended as noted above, and claim 7 cancelled. No new matter is believed added by these changes, which are supported by the specification and claims as filed, e.g., see at least page 4, line 17 to page 7, line 10.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

By way of the Office Action mailed April 22, 2008, Examiner Mercier has noted again that claims 6-7, 10, 13-22 remain withdrawn, and so claim identifiers have been made accordingly. It is noted, however, that while these claims may be to non-elected species, since they are dependent claims, once their underlying elected species claims are allowed then these non-elected species claims can automatically be added back into the application pursuant to 37 CFR 1.142(b).

By way of the Office Action mailed April 22, 2008, Examiner Mercier rejected claims 1-5, 8-9, and 11-12 under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over US Patent Number 6,647,549 to McDevitt et al. in view of US Patent Number 4,820,508 to Wortzman. This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

Summarizing, the present invention is directed to a substrate and device for applying a lip care formulation, and in particular in conjunction with a separate in mouth oral care use. This provides a more simplistic, easier to use, lip and in mouth care device because the exterior surface takes on a dual role within a single device. This is specifically discussed in the application at page 2, lines 12-15 and page 4, lines 15-16. More generally this is discussed at page 4, line 17 to page 7, line 10, namely, page 6, lines 23-32. Such invention requires a combination of recited features, including *inter alia*, a lip care formulation disposed on a first portion of an exterior surface of the device and a second portion of the exterior surface configured to clean the teeth and gums of a user, the second portion comprising a breath freshening agent, a flavoring agent or a dental agent, and wherein the second portion is separate from the first portion.

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In light of the presently claimed invention, the art of record clearly fails to teach or suggest such, and in fact teaches away from such combination of features, and thus the previous rejection is deemed moot. In particular, as amended, the invention recites that the exterior surface has a dual role to function as a lip care applicator in one portion and to function to clean the teeth and gums at a separate second portion. Such is contrary to the teaching in the art of record which teaches only one homogenous use for the taught applicators. Accordingly, claim 1, as well as the remainder of the pending claims, are non-obvious and patentably distinct over the art of record, and in particular McDevitt et al. alone and in combination with Wortzman.

By way of the Office Action mailed April 22, 2008, Examiner Mercier rejected claims 1-5 as allegedly being obvious for nonstatutory double patenting over claims 1-2 of US Patent Number 6,647,549 to McDevitt et al., and over claims 1 and 29 of US Patent Number 6,721,987 to McDevitt et al. These rejections are respectfully **traversed** to the extent that they may apply to the presently presented claims. For at least the same reasons just discussed above, there can be no double patenting based on the cited McDevitt et al. patents.

All of the objections and rejections made in the office action are believed to be overcome or rendered moot based on the above amendments and remarks. Applicant respectfully submits that claims 1-5, 8-9, and 11-12 (as well as withdrawn dependent claims upon any of these) are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (920) 721-6854 to facilitate prosecution of this application.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-6854.

Respectfully submitted,

MICHAEL S. BRUNNER

By: 

Michael J. Bendel

Registration No.: 39,605

Attorney for Applicant(s)

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### CERTIFICATE OF TRANSMISSION

I, Lanette Burton, hereby certify that on May 15, 2008, this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

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